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TAGS: [PHUM](#) [PGOV](#) [PREL](#) [AM](#)
SUBJECT: DISMISSED ARMENIAN JUDGE CRIES FOUL

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Classified By: CDA R.V. Perina for reasons 1.4 (b,d).

SUMMARY

¶1. (C) Fired judge Pargev Ohanian told us his October 16 dismissal by President Kocharian was politically motivated, and a clear indication that judicial independence is nonexistent in Armenia. Ohanian had garnered public fame for dismissing prosecution charges against Armenian businessmen, who alleged their firm was targeted for reprisal for refusing a senior law enforcement official's demand to be given an ownership interest in the business. Ohanian said his ouster arose from his unwillingness to bow to government pressure, and because of his part in exposing corruption at the "very highest levels" of Armenian society. He said his dismissal created a climate of fear amongst Armenian judges, who will merely act as rubber stamps for the government. Judge Ohanian is planning to appeal his case in Armenia and take it to the European Court of Human Rights if need be, though he is worried about his personal safety. End summary.

PRESIDENT DISMISSES INDEPENDENT-MINDED JUDGE

¶2. (C) Poloff and post's USDOJ resident legal advisor (RLA) met October 19 with Judge Pargev Ohanian after his dismissal by President Kocharian October 16 for "serious violations of law" in the judge's handling of two dozen previous criminal and civil cases. The president's action fulfilled an October 12 dismissal recommendation by the Council of Justice, a presidentially-appointed body that oversees Armenia's judicial system. The dismissal has been largely interpreted in the media and legal profession as retribution for Ohanian's sensational July acquittal of two Armenian businessmen involved in a corruption-related dispute with the government dating back to 2005. Prior to their October 2005 arrest, the owner and senior executive of the Royal Armenian coffee company had repeatedly alleged that their company was being illegally penalized by the State Customs Committee (SCC) for its refusal to engage in a fraud scam with senior customs officials. Later charged with evading USD 3 million in taxes and defrauding a U.S. business partner, the two businessmen finally walked free, when Judge Ohanian acquitted them on July 16, in apparent defiance of the National Security Service (NSS), the Armenian successor to the Soviet KGB, and the agency that handled the Royal Armenia case.

¶3. (C) Judge Ohanian resolutely told EmbOffs that "I am sure I am not guilty" of the alleged charges of "serious

violations of law" in his previous handling of cases, and that the charges are "laughable." (Note: None of the "serious violations of law" purportedly committed by Ohanian involve his handling of the Royal Armenia case. End note.) He claims that his dismissal had nothing to do with these cited violations, but was instead "retribution" for the Royal Armenia case and other cases "where I did not execute the will" of the authorities. Ohanian said it's fairly rare for a judge to be dismissed on such grounds, and that the offenses have to be "obvious and tough," such as erroneously convicting an innocent person. Ohanian said one of the charges against him was purportedly allowing the investigation of one case to go on too long, and in another his failing to prescribe substance abuse treatment for an alcoholic defendant -- charges Ohanian says don't have any legal merit.

14. (C) Armenian prosecutor Armen Boshnaghian (protect), a member of the Prosecutor General's anti-corruption unit and a credible, long-time embassy contact, told PolFSN October 19 that Ohanian's interpretation of events is absolutely correct, and that his downfall resulted from his trespassing on NSS interests in the Royal Armenia case. According to a source of Boshnaghian's, the NSS initiated the probe against Royal Armenia after a high-ranking NSS official was rebuffed in his bid to extort shareholdings and future profits from the company. This rebuff by Royal Armenia was then followed by the SCC fraud scam, which the company also turned down. Ohanian's acquittal of the Royal Armenia executives appears to have infuriated the NSS personnel involved in the affair.

A BLOW AGAINST JUDICIAL INDEPENDENCE

15. (C) Ohanian told EmbOffs that his dismissal eliminated even the pretense of judicial independence in Armenia. While

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Ohanian admitted that authorities had begun to take some positive steps in 2005, including the enactment of structural reforms, increasing judges' professionalism, and the imminent creation of an administrative court system, he stated that the reforms "will have little value if fear and dependence" continue in the Armenian judiciary. He said achieving judicial independence ultimately depended on the president, and that it could be easily achieved if Kocharian gave the green light.

16. (C) Ohanian said Armenia had inherited the Soviet judicial tradition that gives prosecutors virtually complete dominance over judges. Ohanian averred that "judges in Armenia are without protection," referring to the almost 100 percent conviction rate of prosecutors. Ohanian said as the constitutional guarantor of judicial independence in Armenia, the president could quickly buck this tradition and stamp out corruption. But this, according to Ohanian, "would clip his (the president's) wings." (Note: Part of the reason for Armenia's low acquittal rate is that weak cases are often dismissed by prosecutors or "returned for further investigation" and then quietly dropped if the chances of victory appear slim, rather than allowed to play out as far as an acquittal, which is seen as an embarrassment to prosecutors. End Note.)

17. (U) Reaction from legal experts and NGOs following the Ohanian case has been harsh and critical. Viewing the handling of the case and Ohanian's dismissal as retribution for the judge's acquittal of the two businessmen, most observers have characterized the case as another example of government-tolerated corruption. Varuzhan Hochtanian, deputy chairman of the Armenian affiliate of Transparency International, said the case "shows that corruption has an institutionalized character in Armenia." He added that the authorities are not only doing little to tackle corruption,

but are also "punishing people who really fight" against it. The pro-opposition daily Haykakan Zhamanak called the case a "deadly blow" to judicial independence in Armenia. Ter-Yesayan of the NGO Forum, which helps Armenians file lawsuits at the European Court of Human Rights, stated that authorities want to ensure that the "judicial system is not independent." He also added "any positive precedent" of judicial independence "is dangerous" for the authorities.

"NOTHING TO DO WITH ROYAL ARMENIA"

¶18. (C) Armenian judges have been conspicuously absent in the public discourse on Ohanian's plight, with none issuing public comments to date about their colleague. When asked about their silence, Ohanian stated that while many have privately sympathized with him, his case has created a "climate of fear" within the judicial community, and that judges are "scared." Reactions to the case from government officials have been sparse. After disciplinary proceedings were launched in early September for "serious violations of the law" in Ohanian's handling of two dozen criminal and civil cases (unrelated to the Royal Armenia litigation), Justice Minister Gevorg Danielian on September 24 denied any connection between the Royal Armenian case and Ohanian's dismissal, and instead attributed the timing of events to "pure coincidence."

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NEXT STEPS, FRAYED NERVES, CALL FOR USG SUPPORT
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¶19. (C) Judge Ohanian told emboffs that he plans to appeal his case in Armenian courts, and take it to the European Court of Human Rights if necessary. He asserted that getting reinstated "is not important" to him, but rather a just handling of his case is. He said he had expected some form of retribution from the authorities for his acquittal in the Royal Armenia case, but had not thought the president would go as far as to dismiss him. Ohanian said he is prepared for the consequences of his appeal, and resolutely stated that if handled fairly, justice would be on his side. But he also nervously informed EmbOffs that "anything can happen" to him once he starts down this path. He said he is aware of moves underway to smear his reputation and level charges for his handling of the Royal Armenia case by the U.S. business partner who is of Armenian descent. At the end of the meeting, he asked for USG moral support, and said Washington could most help judicial independence by ensuring free and fair presidential elections next February.

COMMENT

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¶10. (C) Judge Ohanian is widely respected within the Armenian legal sphere for his competence and professionalism, as well as his commitment to judicial reform. Ohanian's spotlighting of high-level malfeasance in a notoriously corrupt agency appears to have touched a raw nerve within the ruling circles. His ouster is a discouraging signal that the forces of corruption remain a stronger force in the justice system than the voices of reform and rule of law.
PERINA